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Whilst thus simplifying the situation, it must be conceded that the Chinese social organization overseas early revealed serious deficiencies. It was not a complete unit of China transplanted, but fragments from various settings placed together in one spot. Different tribes and classes were put into unwonted juxtaposition, and the criminal and unruly element was disproportionately strong (this last fact needs emphasis). Embryo communal or municipal systems were often taken charge of by the deadly Triad society which used them for its own purposes. At the same time, too rigid a distinction has been drawn between the 'benevolent' *kongsis* and the 'malevolent' *huis*, or secret societies: it seems that the two were not separated in this categorical fashion and in fact were sometimes distinct associations with benevolent functions and Triad societies at one and the same time.[1] The shortcomings of the system became very manifest at certain times, as in Java when Chinese secret societies plotted to seize power from the Dutch, and in the Straits Settlements when these societies under the Triad societies got much out of hand and caused riots and practised intimidation for many years, later extending their activities to Perak where they added to the existing disorder until it approached anarchy.

This, however, is a special aspect of Chinese society in the Nanyang and is by no means typical. By and large, the Chinese were very law-abiding and gave the ruling Powers little trouble. Schlegel was right when he said that the Chinese were 'easy to govern'. Indeed this quality has brought them, at times, into the contempt of rough European individualists who have dismissed this tractableness as the characteristic of 'sheep'.

Students of the Chinese language who have ploughed through the *Tsŭ Erh Chih*, Sir Francis Wade's Documentary Series, will remember a number of memorials in which prefects or intendants

[1] The writer, after extensive experience of secret societies and district and clan organization, is sceptical of many of the theories advanced by observers. Schlegel (as we have seen in the chapters on the Kongsis of Borneo) has definitely regarded the Kongsis as a transplanting of municipal organization necessary to the functioning of Chinese society. Yet they were certainly 'secret societies' under Triad or Heaven and Earth League control. Only when countries, such as Malaya, began to legislate to control these societies was a distinction made between 'good' and 'bad' societies: the former were granted registration; the latter, if they functioned without registration, were illegal and, of course, definitely 'secret societies'. The writer is of opinion that a great deal more research into the matter is called for. (W. L. Blythe, 'The Interplay of Chinese Secret and Political Societies in Malaya', in *Eastern World*, March and April 1950, adds considerably to our knowledge.)

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democracy corresponding to the *vergadering* of Java. In Burma the village has become merely an administrative unit, whereas in Java the village still appears to be mainly a social unit. And it would hardly be possible to find a more striking contrast than between the Village Act of Java, designed as an instrument of social uplift, and the Village Act of Burma, designed as an instrument of law and order and 'vigorously enforced' by fines on villages, villagers and headmen. Government schemes in Java, we are told, 'risk failure if they appeal to the individual economic instincts and have a fair chance of being comprehended and accepted, if they are based on a foundation of organic co-operation'.[1]

Indebtedness. Both in Burma and Java agricultural indebtedness has accompanied, and has indeed been a condition of, economic progress. It was through giving out advances that the planter in Java secured his land and labour, and that the miller in Burma made certain of getting an adequate supply of paddy at the lowest possible rate. The Dutch, with their State pawnshops and People's Banks, have done more than has been attempted in Burma to provide credit on sound lines, but they have by no means solved the problem of indebtedness; alongside the state institutions the private moneylender still flourishes. But the application of native customary law to land, and the prohibition against the alienation of land to foreigners have obviated the most pernicious social and political consequences of agricultural indebtedness, and it is not in the same measure as in Burma a cause of agricultural distress and political ill-will.

Litigation and Crime. Until quite recently litigation was as unusual in Burma as it still is in Java. But in Burma the people have been encouraged to settle their disputes by the processes of western law; whereas in Java, customary law and the practice of arbitration and the settlement of disputes by reasonable compromise have survived.

An even greater contrast is presented in respect of crime. In Java the death sentence is almost unknown; for the five years from 1935 to 1939, with a population for the whole of Netherlands India of nearly 70 million, only three persons were sentenced to death; in Burma, with a fifth of the population, the death sentence is passed on some two hundred a year and upwards of a hundred a year are hanged. It is difficult to compare sentences of imprisonment, but the position in Java is very different from that in Burma where, for some thirty years, the accommodation for convicts has failed to keep pace with

[1] Hart, p. 65.

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674 681 the number sent to prison, and one reads year after year of overcrowded jails. In Burma whipping is freely used in addition to, or as a substitute for, imprisonment, and is a regular feature of jail discipline, whereas in Netherlands India whipping has been abolished as a judicial penalty and, though still permissible for unruly convicts, is in practice never used. In Burma, in addition to those convicted of offences, upwards of two thousand people a year may be placed on security, imprisoned or restricted under the ordinary Criminal Procedure Code, and another five hundred under the more rigorous provision of the Habitual Offenders Restriction Act.[1] In Netherlands India action along these lines seems to form no part of the ordinary processes of law. After the revolutionary outbreak of 1926–7 in Netherlands India, upwards of a thousand people were interned and deported by executive authority; but this was an exceptional measure to counter an emergency. In Burma, however, the Village Act provides for deportation as part of the recognized machinery of administration, and under this Act over twelve hundred were deported in connection with the rebellion of 1931.[2] In Burma collective penalties are imposed over large areas under the Police Act by quartering on them punitive police, of which the inhabitants must defray the cost; collective penalties may also be imposed on villages under two distinct sections of the Village Act. In the police courts of Burma a fine of less than Rs. 5 is unusual; in Java the penalty rarely seems to exceed half a guilder.

674 Yet in Burma, despite this vigorous enforcement of the law, crime continues to increase, whereas in Java the registers of the police stations seem mostly to be filled with charges as to the use of an unduly severe bit, riding a horse without a saddle, or something of that order.[3] In Netherlands India the whole system of administration is directed to preventing crime by removing its causes: in Burma the Government has been content to aim at maintaining law and order through legal penalties. In Lower Burma up to 1880 the proportion of Burman convicts was far lower than among other sections of the population, and up to 1910 Upper Burma was comparatively free of crime. These facts sufficiently dispose of a general indictment against the people as normally and naturally criminal, and the only possible conclusion would seem to be that the principles on which the administration of Burma has been conducted

[1] *RAB*, 1926–7, p. 23. [2] *RAB*, 1931–2, p. 77.
[3] *Netherlands India*, p. 299; Colijn, cited Bousquet, p. 90.

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were such as to develop their worse rather than their better qualities. Our methods might have done very well for Europe; they may have been suitable in India, where the people are protected against economic forces by the ties of caste, but they did not suit the Burman. 'It was the best butter', said the Hatter; but it spoiled the watch.

Clerical Unrest. In Burma the turbulence prevalent among the monks is one of the more recent features of social disorder and unrest, but it is merely one aspect of the dissolution of society indicated by the growth of crime. In Java there is nothing of the kind. As already noticed, causes relating to religion are tried in special Moslem courts, instead of, as in Burma, coming before the ordinary lay court; and the law applied is Moslem ecclesiastical law as interpreted by native Moslem judges, whereas in Burma the rule of decision is looked for in the *dhammathats* as interpreted on the principles of western law. The procedure in Java does not weaken but fosters corporate authority in the religious establishment. Moreover, the village clerics are appointed by or with the approval of the Regent, whereas in Burma the Government has held aloof from all concern with promoting the establishment, while actively breaking it down by the transfer of religious causes to the civil courts. The Dutch have with good reason tried to conciliate Moslem sentiment and, even if they have not been wholly successful, there is nothing in Java corresponding to the clerical unrest in Burma.[1]

Corruption. We have had to notice the prevalence of corruption in Burma. By all accounts it is practically unknown in Java. The absence of judicial corruption can easily be understood. Petty cases are settled by arbitration either out of court, or before a bench of notables with a senior and well-paid official as chairman; or they go before a civil servant or judicial officer with long service and on high pay. Moreover, the penalties imposed are so trivial that it is cheaper to be punished than to bribe a policeman or magistrate to escape punishment. Serious matters go before a bench containing at least three high judicial officers as well as laymen of good standing. It would be difficult and dangerous to bribe the whole bench. In civil cases the decision purports to follow customary law, and the people can know whether it is right; the court must justify itself to popular opinion and not to higher judicial authority. In these circumstances there is little scope for bribery.

But that corruption should be unknown in general administration,

[1] Bousquet, pp. 51ff.; *Vrij Nederland*, 27 Nov. 1943.

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691 indicated, education tends to flood the land with lawyers, who foster litigation for their living. The growth of litigation in India has long been deplored. In Burma there was little litigation until rapid economic development began in 1870, and so late as 1886 it could still be said that Burmans were not litigious. That is no longer true. We find the same plague of lawyers in Indo-China and the Philippines, and in Africa litigation has been described as the curse of the country. 674 The law breeds litigation and this, married to poverty by agrarian distress, breeds crime. Here again Burma is exceptional, but it appears that of the four countries in the world with the highest proportionate jail population, three are British dependencies.[1] All this is nothing new. In Burma, as far back as 1883, dacoit bands flourished just outside the capital. So they did in Java in 1830, when the introduction of western law by Raffles created a 'proletariat who go about and steal'. Still earlier in Madras, on the introduction of the rule of law from Bengal at the end of the eighteenth century, 'the same results', says Munro, 'followed here which had occurred elsewhere; justice ceased in great measure to be administered and the increase of crime was appalling'.[2] These words might have been taken from any report on the administration of Burma from the eighties onwards.

696 Under native rule disputes are usually settled by arbitration. Under European rule it is at first only in cases with foreigners that natives come to court. Naturally Europeans best understand their own laws, and the middlemen and moneylenders learn it in the course of business, but the cultivator neither understands the law nor how it works and, as a rule, is least able to afford a skilful advocate. The decision usually goes in favour of the longer purse. Men who lose their case against a wealthier opponent and without understanding that a decision, apparently arbitrary and in their view unjust, may none the less be good law, naturally attribute the result to bribery, and this is the readiest excuse given by their advocate for his failure. Nothing is so favourable to judicial corruption as a belief that it is general. That is a principle which works in Africa as in Asia.[3] It seems, indeed, to be generally true in tropical dependencies that western law encourages litigation, crime and corruption.

182 The substitution of the rule of law for the rule of custom naturally expedites the disintegration of the customary social structure. But it also reacts more directly on the social structure. The former native

[1] Barnes, L., *Skeleton of the Empire* (1937), p. 60.
[2] Gleig, pp. 221–2.
[3] *Colonial Review*, 1944, June, p. 170.